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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,053	12/29/2000	Daniel W. Gil	D2919	8979

7590
Frank J Uxa
4 Venture Suite 300
Irvine, CA 92618

11/25/2002

EXAMINER

RILEY, JEZIA

ART UNIT	PAPER NUMBER
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1637

DATE MAILED: 11/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,053

Examiner

Jezia Riley

Applicant(s)

GIL ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 23-28, 30-44 and 68-71 is/are pending in the application.
- 4a) Of the above claim(s) 18-21, 23, 24 and 35 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 70 and 71 is/are allowed.
- 6) ☒ Claim(s) 1-16, 25-27, 30-40, 42-44, 68, 69 is/are rejected.
- 7) ☒ Claim(s) 17, 28 and 41 is/are objected to.
- 8) ☒ Claim(s) 1-21, 23-28, 30-44 and 68-71 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Remarks

1. Applicants' arguments and amendments, filed on 10/10/02, have been approved and entered. They have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either newly applied or reiterated. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-6, 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3-6, 13-15 are vague and indefinite because it is unclear of what the metes and bounds for the phrase "variants thereof".

Claim 16 recites the limitation "the fragment" in 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-3, 7-12, 25-27, 30-34, 36-40, 42-44, 68, 69, are rejected under 35 U.S.C. 102(a) as being anticipated by Sawamura Journal of Neuroscience, December 15 2000, 20(24), pp. 9242-9241).

Sawamura et al. discloses anti-dopamine β hydrolase-saporin immunotoxin was produced by conjugating saporin, a ribosome –inactivating protein, with a mouse monoclonal antibody for D β H. D β H, a key enzyme for the synthesis of norepinephrine is only present in noradrenergic and adrenergic neurons. When the D β H-saporin conjugate is injected, it is taken up in the axon terminals of catecholaminergic neurons, undergoing retrograde transports to the neuronal cell bodies where it arrests protein synthesis. Sawamura discloses indirect measures of neuronal activation and toxins targeted for norepinephrine-containing neurons and elucidate the role played by noradrenergic nuclei in the brainstem for the antinociceptive action of N2O. There are three α 2 adrenoceptor subtypes (α 2A, α 2B, and α 2C) and each of the genes for these receptors subtypes have been cloned., thereby facilitating the creation of genetically modified reagents with dysfunctional (point mutation) or deficient subtypes. Sawamura shows that the 2A adrenoceptor subtype was not responsible for the antinociceptive

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effect of N2O. Sawamura reveals the precise subtypes involved in mediating the antinociceptive action of N2O. (see page 9242, , 9243, 9249, and 9250 for example).

5. Claim 17, 28, and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

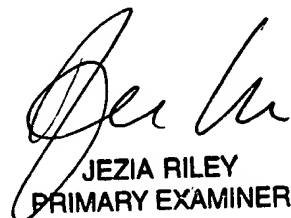
6. Claims 70 and 71 are allowed.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jezia Riley whose telephone number is 703-305-6855. The examiner can normally be reached on 9:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 703-308-1119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

November 22, 2002


JEZIA RILEY
PRIMARY EXAMINER